

STATE OF MICHIGAN
COURT OF APPEALS

In re WILLIAM DEVONTE HOLMES.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

WILLIAM DEVONTE HOLMES,

Respondent-Appellant.

UNPUBLISHED

July 1, 2014

No. 315150

Oakland Circuit Court

LC No. 2009-755179-DJ

Before: SAWYER, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Respondent was a juvenile when he pleaded guilty, on May 11, 2009, to first-degree criminal sexual conduct, MCL 750.520b(1)(a) (sexual penetration with a person under 13 years old), on May 11, 2009. He did not challenge or move to withdraw his plea in the trial court. After the initial imposition of a delayed sentence, the trial court sentenced respondent as an adult on December 18, 2012, to nine to 15 years in prison. We grant leave for respondent to appeal his conviction and sentence.¹ We affirm.

The prosecutor designated respondent's case to be tried in the same manner as an adult case. MCR 3.951(A). "Pleas in designated cases are governed by subchapter 6.300." MCR 3.954. MCR 6.310(C) provides that a motion may be filed to withdraw the plea within six months after sentencing, and thereafter relief can only be sought pursuant to the procedures set forth in subchapter 6.500. Because respondent never moved to withdraw his plea, appellate review of his plea is precluded under MCR 6.310(D), which provides:

¹ Although respondent filed a claim of appeal, this Court lacks jurisdiction over this claim because respondent's conviction was based upon a guilty plea. MCR 7.203(A)(1)(b). However, because this case was pending in the Court of Appeals for months, during which the prosecutor's office failed to file a motion to dismiss the claim of appeal on jurisdictional grounds, this Court has decided to treat the claim of appeal as an application for leave to appeal, grant the application, and consider the substantive merits of the appeal.

A defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal.^[2]

Respondent next argues that his sentence was unfair and violated his due-process rights. Respondent asserts that the sentencing court failed to consider the criminal conduct of the alleged victim, misstated the ages and relationship of respondent and the victim, and failed to develop factual issues. We disagree. Because respondent failed to challenge the trial court's findings or his sentence in the trial court, our review of this unpreserved issue is for clear error affecting a substantial right. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999); *People v Sexton*, 250 Mich App 211, 227-228; 646 NW2d 875 (2002).

When a court imposes a delayed sentence in a juvenile proceeding, it must then conduct a review hearing to decide whether the respondent has been rehabilitated. MCL 712A.18i(3). "If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued or the court may impose sentence." *Id.* At the various proceedings on this matter, the trial court assessed respondent against the factors set forth in MCR 3.956(A)(4)(a).³

² Respondent argues that the trial court's procedure in taking his plea violated his due-process rights and that the court failed to comply with MCR 6.302 and MCR 3.941(C) by not informing him of the maximum possible prison sentence for the charged offense. First, we note that a hearing referee did inform respondent of the maximum possible prison sentence. Second, respondent did not object to the plea procedure at any time in the trial court or when he was given a blended sentence. Respondent only found alleged deficiencies in his plea process once he was given a prison sentence. A plea's validity may not be contested merely out of subsequent sentencing concerns. See *People v Ward*, 459 Mich 602, 612; 594 NW2d 47 (1999), amended by 460 Mich 1204; 596 NW2d 152 (1999).

³ The factors are:

- (i) the extent and nature of the juvenile's participation in education, counseling, or work programs;
- (ii) the juvenile's willingness to accept responsibility for prior behavior;
- (iii) the juvenile's behavior in the current placement;
- (iv) the juvenile's prior record, character, and physical and mental maturity;
- (v) the juvenile's potential for violent conduct as demonstrated by prior behavior;

There is no evidence to indicate that the trial court considered the age differential between respondent and the victim when imposing its sentence. We acknowledge that the trial court made certain misstatements. The trial court incorrectly stated that the victim had been 11 years old at the time of the offense and that the victim was respondent's sister, when the victim was respondent's stepsister and was actually 12 years old at the time of the offense.⁴ However, our review of the entire record does not plainly show that these misstatements had an impact on the trial court's findings or sentence or that the court committed a clear error in any other way in sentencing respondent.⁵ Overall, the record sufficiently demonstrates that the trial court adequately followed the factors set forth in MCR 3.956(A)(4)(a) and used its findings under those factors in deciding to sentence respondent as an adult and in determining respondent's sentence.⁶

Respondent argues that both respondent and the victim violated MCL 750.520b, because both engaged in intercourse with an underage person; respondent contends that this fact should have been considered. However, such a fact has been found to be irrelevant for purposes of the criminal sexual conduct statute. This Court has held:

Because the purpose of the [criminal sexual conduct] statute is the protection of the minor victim, the age of the offender is not a relevant concern. Statutory rape, a strict-liability offense, has been upheld as a matter of public policy because of the need to protect children below a specific age from sexual intercourse. . . . Because this policy focuses on the exploitation of the victim, we find that the Legislature did not intend to withdraw the law's protection of the victim in order to protect the offender.

* * *

(vi) the recommendation of the institution, agency, or facility charged with the juvenile's care for the juvenile's release or continued custody;

(vii) any other information the prosecuting attorney or the juvenile submit.
[MCR 3.956(A)(4)(a).]

⁴ At an earlier point in the proceedings the court also gave indications that defendant had been 15 at the time of the offense, when actually he had been 14.

⁵ In fact, the court acknowledged that that the victim was actually respondent's stepsister after being informed of that fact by respondent's attorney.

⁶ Additionally, the adult sentence imposed by the trial court was the lowest sentence possible within the sentencing guidelines range. "Under the statutory sentencing guidelines, this Court must affirm a minimum sentence that falls within the appropriate guidelines range 'absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence.'" *People v Armisted*, 295 Mich App 32, 52; 811 NW2d 47 (2011), quoting MCL 769.34(10).

While an older child could certainly manipulate a much younger child, defendant and the victim were less than two years apart in age. . . . While we agree that consensual sexual relations involving two partners over a certain age might not involve exploitation or manipulation, it is not our role to create policy. . . . If our state legislature had intended that courts consider the age differential between the offender and the victim, it could have included this consideration in the criminal sexual conduct statutes. [*In re Hildebrant*, 216 Mich App 384, 386-387; 548 NW2d 715 (1996).]

Lastly, respondent has failed to provide any authority for his argument that he was entitled to be present at the review hearing before sentencing, when his absence was voluntary. Respondent violated his probation by absconding for several months before being apprehended, and he was still missing at the time of his review hearing. Further, evidence was presented that a police officer told respondent's father about the review hearing and that the father told respondent to "turn himself in," but respondent nonetheless failed to appear. Respondent was at the dispositional hearing when the court imposed its sentence and was permitted to testify extensively before being sentenced. We find no basis for reversal.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood